

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
The Use of N11 Codes and Other ) CC Docket No. 92-105  
Abbreviated Dialing Arrangements )  
  
To: The Commission

**COMMENTS OF COX ENTERPRISES, INC.**

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## SUMMARY

Cox Enterprises, Inc. files these comments solely to address the question of whether the Commission can or should sell N11 numbers or other numbering resources. Such sales are neither in the public interest nor within the Commission's authority.

First, sale of numbers is not in the public interest. It will not increase the efficiency of distribution of numbering resources, but will instead create significant advantages for companies that already have the numbering resources they need. Sale of numbering resources is incompatible with the way the North American Numbering Plan was developed and is administered. Moreover, there is no good way to sell numbering resources.

Even if there were good reasons to sell numbering resources, the Commission lacks the authority to do so. Section 251 gives the Commission specifically limited authority to cover the costs of numbering administration and number portability, but Section 251 does not permit selling telephone numbers. At the same time, nothing in the rest of the Communications Act gives the Commission the authority to sell numbering resources. Without authority specifically delegated from Congress, the Commission cannot raise revenue in this way.

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<sup>2</sup>Consequently, these comments relate to Section IV(C) of the *Notice*.

imposition of charges for access to numbering resources, therefore, would have a significant inflationary impact on all aspects of Cox's operations.

**I. The Sale of Telephone Numbers by the Commission Is Not in the Public Interest.**

The touchstone for any Commission action is whether it is in the public interest. Indeed, the Commission is charged to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication services with adequate facilities at reasonable charges[.]" 47 U.S.C. § 151. Sale of N11 numbers or other numbering resources would not further this goal. Instead, sale of numbering resources would lead to inequitable, inefficient distribution of those resources, principally at the expense of new users of those resources.

Although the distribution of numbering resources today is not perfect, it is much more efficient than it was even ten years ago. It is extremely unlikely that the sale of numbering resources would add efficiency to that system, especially in light of toll-free number portability, the existing NXX code assignment guidelines and the advent of permanent local telephone number portability over the next few years. Indeed, selling telephone numbers could introduce inefficiencies into numbering assignment by creating new incentives for users to hoard telephone numbers, which would be likely if there were a perception that the price of numbers will increase over time.

Selling telephone numbers also would create significant advantages for companies that now hold telephone numbers, both as end users and as telecommunications providers. It is unlikely that these companies would be required to pay for the numbering resources they already have. Only those companies that need numbering resources would be required to pay. Incumbents also are less likely to need new numbering resources than new entrants or

fast-growing rivals, so it is a lesser burden for them to pay for the few resources they have to acquire. In the long run, the additional burdens imposed on new entrants and entities with fast-growing needs for numbering resources likely would be competitively significant. This not only would violate the Commission's obligations under Section 1 of the Communications Act, but also the requirement of Section 251(e) to make "numbers available on an equitable basis." 47 U.S.C. § 251(e)(1).

Moreover, selling telephone numbers is incompatible with their nature as a public resource. The North American Numbering Plan developed and evolved under the guidance of private entities, first AT&T and, more recently, the telecommunications industry as a whole. Given this history, telephone numbering is much more akin to the private standards-setting process of entities such as Committee T-1 or ANSI than to the type of resource that can be bought or sold.<sup>3</sup> The key role of the industry in administering numbers has been recognized by the Commission in its decision to create the North American Numbering Council. It also has been recognized by Congress through its adoption of Section 251. It would be inappropriate for the Commission now to claim that it has a right to sell this privately-developed and administered resource.

Sale of numbering resources also would create new issues that the Commission otherwise would not confront. For instance, if a telephone number is sold, the owner of the number could have certain rights in the context of area code relief that telephone number

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<sup>3</sup>Standards-setting bodies, as a rule, do not charge entities that wish to produce goods or services in accordance with those standards, largely because the standards do not "belong" to anyone, including the government. The most the government can do is to approve particular standards. *See, e.g., Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fourth Report and Order*, 11 FCC Rcd 17771, 17772-3 (1996).

assignees do not have today. For that matter, the sale of numbers could result in the development of new numbering resources being delayed as a way to increase the value of existing resources.<sup>4</sup>

Finally, it is not apparent that selling numbers even would provide a financial benefit to the American public. Unlike the Commission's spectrum auctions, in which specific types and amounts of spectrum are sold at specific times, sales of telephone numbers would be inherently unpredictable. A number that may be valueless today could be very valuable tomorrow. (For instance, neither the Commission nor the telephone industry placed any value on N11 numbers until Cox found a use for them in the early part of this decade or on 900 numbers until the last few years.) It is not difficult to imagine that there would be only one bidder or none for most numbers. At the same time, there is a constant demand for numbering resources, so it is unreasonable to attempt to sell them all at once. If the Commission attempted to set specific prices for numbering resources, it inevitably would set most of the prices incorrectly, and the expense of determining those prices would likely overwhelm the revenues that would result. The most likely outcome would be significant market inefficiencies because most resources would be too expensive and the most valuable numbers would be significantly underpriced. Taken together, all of these concerns demonstrate that a Commission effort to sell numbering resources would not be in the public interest.

## **II. The Commission Lacks the Authority to Sell Numbering Resources.**

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<sup>4</sup>For example, in this proceeding, the Commission is considering issues relating to abbreviated dialing arrangements other than N11 numbers. *Notice* at 37. The availability of other abbreviated dialing arrangements plainly would make N11 numbers less valuable and, hence, could reduce potential revenues from the sale of those numbers.

The only potential benefit of selling numbering resources would be the revenue that might be generated. The Commission, however, lacks the power to authorize such a sale. Congress has established specific rules governing administration of numbering resources and limiting the Commission's authority to impose charges on its licensees and others. These rules do not permit the sale of numbering resources.

Congress has spoken specifically on the Commission's authority to generate revenues relating to numbering matters. Section 251(e)(2) provides that the Commission has the authority to recover "[t]he cost of establishing telecommunications numbering administration arrangements and number portability" from telecommunications carriers "on a competitively neutral basis." 47 U.S.C. § 251(e)(2). That is the extent of the Commission's authority. Section 251(e) does not permit the Commission to raise more revenue than necessary for those specific purposes. For that matter, Section 251(e) also forbids mechanisms that are not competitively neutral. Because of the disparate competitive impact on new entrants and others with high demand for numbering resources (as described above), the sale of numbering resources obviously cannot meet this requirement.

Efforts to look to other provisions of the Communications Act to authorize the sale of numbering resources also would be of no avail. Although Congress granted the Commission authority to impose charges in other parts of the Communications Act, none of those provisions apply to numbering resources. *See* 47 U.S.C. §§ 8(g) (application fees); 9 (regulatory fees); 309(j) (spectrum auctions). Each of these provisions applies to specific services or types of authorization; none could be stretched to cover numbering resources. Considering the detail with which Congress has specified the Commission's authority to raise revenue, the Commission cannot conclude it is authorized to extend that authority to areas



Congress has not considered. In fact, that authority is reserved exclusively to Congress.

U.S. CONST. art. I, § 8 (giving Congress the authority to raise revenues). Absent a specific direction from Congress, the Commission cannot raise revenues on its own.

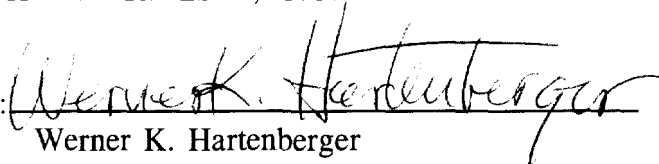
### III. Conclusion

For all these reasons, Cox Enterprises, Inc. respectfully requests that the Commission adopt rules in accordance with these comments.

Respectfully submitted,

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March 31, 1997


## **CERTIFICATE OF SERVICE**

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 31st day of March, 1997, the foregoing "Comments" were sent via hand delivery to the following:

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